COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No.110 of 2004

Sedco Forex International Drilling Inc.
as agent of its employee Mr. S.Rothel
a company incorporated in the Republic of Panama
having its registered office at No.8 Acquitino de la
Guardia Street, City of Panama, Republic of Panama,
present Address C/o A.F. Ferguson & Co.
Maker Towers, Cuffe Parade, Mumbai

..... Appellant

Versus

1. The Commissioner of Income Tax, Dehradun having office at Subhash Road, Dehradun-248001
2. The Assistant Commissioner of Income-Tax, Special Range, Dehradun having office at Subhash Road, Dehradun- 248001

..... Respondents

Mr. Arvind Vashisth, Advocate for the appellant.
Mr. S.K. Posti, Advocate for the respondents.

Dated: December 13, 2005

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

Both the parties are ready to argue the matter today.

2. This appeal has been preferred against the consolidated order dated 30.01.2004 for the assessment year 1994-95, passed by the Income Tax Appellate Tribunal, (Bench 'B' New Delhi).

3. Brief facts of the case-giving rise to this appeal are that appellant is a non-resident in receipt of salary from the appellant in terms of the service contract. The appellant

normally resides on the rigs for a period of 28/35 days and thereafter he is off the rigs for 28/35 days. On the basis of this, it was the claim of the assessee that off-period salary is not assessable to tax in India, as there were no services rendered in India for which the payment was made. The Assessing Officer held that off-period salary is chargeable to tax u/s 9(1)(ii) and accordingly taxed the salary. In appeal, the Commissioner of Income Tax (Appeals), Dehradun affirmed the order of the Assessing Authority. In the second appeal, the Income Tax Appellate Tribunal partly allowed the appeal.

4. The learned counsel for the parties agree that only the following question of law arises in the appeal for the determination and they do not press the rest of the questions framed in the appeal: -

> **Whether the Tribunal was right in holding that off-period salary was not taxable under section 9(1)(ii) read with the Explanation as it stood at the relevant time?**

5. This question was answered by the Division Bench of this Court in the favour of the Revenue Department in the case of Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd. reported in (2003) 264 ITR 320. The Special Leave Petition was filed against the judgment by the Sedco Forex International Drilling Co. Ltd., which was converted into Civil Appeal Nos.351-355 of 2005. The Hon'ble Apex Court in "**Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) SC 639**" has held that since the Explanation to Section 9(1)(ii) of the Income Tax Act, 1961 was amended by the Finance

Act 1999 and was prospective, therefore, it could not be made applicable in the previous years i.e. to say that no retrospective effect can be given to the Explanation, if the assessment proceedings are pending after the said amendment and accordingly the judgment of Division Bench of this Court was set aside as the assessment year in dispute was prior to 1999.

6. In the present case also, the assessment year is prior to 1999, thus the assessee cannot be taxed in view of the law laid down by the Hon'ble Apex Court "**Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another (Supra).**

7. Accordingly, the appeal is allowed. The question is answered accordingly. No order as to costs.

(J.C.S. Rawat, J.) **(P.C. Verma, J)**

Rajeev Dang